

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4191 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAYARABIBI GULAM RASUL SHEIKH

Versus

DY. COMMISSIONER OF POLICE (SOUTH)

Appearance:

MR PJ MEHTA for Petitioner

MR SP HASURKAR, Addl.GP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/12/98

ORAL JUDGEMENT

The petitioner herein was working as woman First Grade Head Constable in the Police department. By the order dated 26th June 1997, on attaining the age of 55 years, she was given compulsory retirement with effect from 30th June 1997, in public interest, by giving three months' pay through a cheque dated 8th May 1997 for a sum of Rs.13,734/- enclosed with the order in lieu of three months' notice. The petitioner submitted a representation/appeal against this order dated 11th August 1997, but the communication was sent to her on 7th January 1998 in pursuance of the decision taken by the Home Department, Govt. of Gujarat, dated 28th November

1997 that her representation against the order of compulsory retirement is rejected. The petitioner has stated that she was appointed as a woman Police Constable in the woman police force (unarmed) on 22nd August 1967. She was promoted as Second Grade Constable and thereafter as First Grade Head Constable in April 1992. In the year 1995, she sought permission to go for Haj Yatra to Makka Madina and she had also withdrawn an amount of Rs.60,000/- from her Provident Fund and had also applied for sanction of 70 days' privilege leave which was due to her credit. The programme of Haj Yatra was fixed, but the leave was not granted. The petitioner, therefore, requested to grant C.L., but the entire leave for the period of Haj Yatra was deducted as 60 days' leave without pay. It has been submitted that in the period of five years preceding to the year of compulsory retirement, there was nothing against the petitioner on the basis of which an opinion could be formed that she deserved compulsory retirement in public interest and it has also been submitted that the very fact that she was promoted as First Grade Head Constable in April 1992 goes to show that there was nothing against the petitioner prior to 1992 and even if there was any adverse material prior to that, the same stood washed off when she was promoted in April 1992. The Rule was issued on 13th July 1998 in this case and the interim order was passed that the respondents shall not insist upon the petitioner to vacate the Government quarter allotted to her on payment of usual rent. On 14.8.1998 the case was ordered to be listed for final hearing on 3rd Sept.1998 in the Admission Board, yet the respondents did not file any reply. On behalf of the respondents, in the first instance, an affidavit-in-reply dated 4th November 1998 was filed; thereafter a chart showing the punishments and adverse remarks etc. dated 6.11.1998 and another affidavit-in-reply dated 9th November 1998 was filed. The petitioner filed a rejoinder affidavit dated 17th November 1998 and thereafter a further affidavit-in-reply dated 30th November 1998 was filed, since the opportunity was granted by the Court to the respondents on 25.11.1998, although the matter had been heard more than once by that time.

2. The adverse material which is sought to be relied upon against the petitioner for the purpose of forming the opinion that she deserved compulsory retirement in public interest is for the period between 1968 to 1996. So far as the period after her promotion as First Grade Constable in April 1992 is concerned, it appears that she was reprimanded on 12.2.1993 for the incident which took place on 24th July 1992 for insubordination with P.S.I.;

on 13.11.1994 for the incident of 31st October 1994 for leaving duty without informing higher officers; and again on 16.1.1995 for the incident of 2nd December 1994 that she left the duty during 'Bandobast'. The adverse remarks for the years 1994, 1995 and 1996 were communicated to the petitioner simultaneously on 3rd July 1996. This Court has already held in the case of Dr.B.R.Kidkani v. Govt. of Gujarat, reported in 19 GLR 1021 that adverse remarks which are conveyed for various years simultaneously and are not conveyed within reasonable time stand vitiated. Therefore, the same cannot be given effect to and act upon, as such communication of adverse remarks defeats the very purpose and the object for which the same are recorded and maintained. It is true that an employee's service image is reflected in such adverse remarks and in case the same are not recorded and communicated in accordance with the relevant instructions, they may leave an indelible imprint on the service career of a person to his/her prejudice and therefore, they could not be made use of against him/her unless the same are recorded and communicated in accordance with the relevant instructions in this regard. Therefore, it is found that so far as the adverse remarks against her for the years 1994, 1995 and 1996 are concerned, they could not be considered. After her promotion as First Grade Head Constable in 1992, there are three orders as above reprimanding her; one for insubordination with woman PSI, and the other for leaving the duty without informing higher officer and leaving duty during 'Bandobast'. Such stray incidents cannot form the whole basis so as to form the opinion that it was in public interest to give compulsory retirement to the petitioner and so far as the adverse material prior to 1992 is concerned, the same has to be treated as washed off or condoned and could not be made use of in view of her promotion in 1992 as per the law laid down by the Supreme Court on the case of Regional Manager v. Pawankumar, reported in AIR 1976 SC 1766. Mr. Mehta placed reliance on the case of Brijmohan Singh v. State of Punjab, reported in AIR 1987 SC 948 while Mr.Hasurkar placed reliance in the case of Baikantha Nath Das v. Chief Dist. Medical Officer, Baripada, reported in AIR 1992 SC 1902. Having gone through the relevant decisions in this regard, this Court finds that in fact there was no such material on record on the basis of which any objective opinion could be formed that the petitioner was required to be compulsorily retired in public interest. After all, public interest is not an unruly horse which can take its way in any direction and the adverse material, if any, which cannot be taken into consideration in accordance with law cannot be used as a

ground germane to the requirements of public interest so as to weigh for the purpose of forming opinion warranting compulsory retirement.

3. Any punishment prior to 1992 when she was promoted could not be considered and as has been already held, the adverse remarks for 1994, 1995 and 1996 conveyed simultaneously on 1.7.1996 also could not be considered; the mere stray orders reprimanding her for trifles could not form the foundation for her compulsory retirement. This Court finds that the opinion has not been formed with an objective approach. In such cases, even if it is a case of subjective satisfaction, it is required to be formed on objective facts and with objective approach and this is what is precisely lacking in the facts of this case. In the affidavit-in-reply dated 9.11.1998 in para 6 thereof the Dy.Commissioner of Police has stated that as per the G.R. dated 2.11.1998 only last three years' record is required to be seen and perusing the record of last three years, it was found that the petitioner cannot be continued any further. However, in this case the successive affidavits etc. filed, on opportunity being granted by the Court, show that record for the period even prior to last three years was considered and so far as the record of last three years is considered, this Court has already dealt with the same and it has been found that - on the basis and settled principles of law, it could not form a valid basis to be considered as it either stood vitiated or was with reference to trifles only which could not have formed the foundation to form an opinion so as to warrant her compulsory retirement.

4. It appears that the respondents simply felt irked against the petitioner because in 1995, she wanted to proceed to Haj Yatra to Makka Madina and she had proceeded for this Haj Yatra after applying for leave which was not sanctioned, although it has not been suggested that such leave was not due to her credit. Repeated opportunities were given to the respondents to file replies, but no parawise reply whatsoever has been filed and the allegations levelled in paragraph 3 of the petition have not been controverted. The contents of this para 3 of the petition have been replied in paragraph 5 of the affidavit-in-reply dated 9th November 1998 by Shri Mohan Jha, Dy.Commissioner of Police wherein it has not been denied that the petitioner had drawn a sum of Rs.60,000/- from her Provident Fund in order to proceed for Haj Yatra in 1995. It has also not been denied that she had applied for privilege leave and it has been stated that she did not apply before

Asstt. Police Commissioner 'C' Division and yet it has not been said that she was asked that she should have applied before Asstt. Commissioner of Police 'C' Division. While she had made all preparations and she had proceeded on Haj Yatra without prior sanction of the leave because such opportunities are given by the Haj Yatra Committee only on limited occasions in life, it cannot be said that the petitioner committed such misconduct which was sufficient to form an opinion so as to give her compulsorily retirement in public interest. The leave case was capable of being regularised if leave was in balance to her credit. In the facts and circumstances of this case, it is very clear that the impugned order of petitioner's compulsory retirement dated 26.6.1997 cannot be sustained in the eye of law. The same is hereby quashed and set aside and it is ordered that the petitioner shall be entitled to all consequential benefits as if the impugned order of compulsory retirement had never been passed against the petitioner. This Special Civil Application is allowed and the Rule is made absolute. No order as to costs.

sreeram.